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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 DEBORAH FRAME-WILSON, et al., on
8 behalf of themselves and all others similarly
9 situated,

10 Plaintiffs,

11 v.

12 AMAZON.COM, INC., a Delaware
13 corporation.,

14 Defendant.

CASE NO. C20-424RSM

ORDER GRANTING MOTION FOR
PROTECTIVE ORDER

15 This matter comes before the Court on Plaintiffs' Motion for Protective Order, Dkt.
16 #97. Defendant Amazon opposes. Dkt. #101. Neither party has requested oral argument.

17 Amazon is "the world's largest online retailer." Dkt. # 55 at ¶ 38. Plaintiffs are online
18 consumers from 19 states, including Alabama, Arkansas, Arizona, California, Florida, Georgia,
19 Illinois, Iowa, Maine, Nevada, New Hampshire, North Carolina, Pennsylvania, Tennessee,
20 Texas, Vermont, Virginia, Washington, and Wisconsin. *Id.* at ¶ 63.

21 Plaintiffs bring this proposed class action against Amazon for violations of the Sherman
22 Act. Plaintiffs allege there are binding agreements between Amazon and third-party sellers that
23 sell on Amazon Marketplace that restrain competition and enable Amazon to create or maintain
24 its online retail monopoly. Specifically, Plaintiffs allege that Amazon's Price Parity Provision
(in effect in the United States until March 2019), and its Marketplace Fair Pricing Policy
(enforced by Amazon from 2017 through the present) are designed to and have the intended

1 effect of preventing third-party sellers from selling their goods on other online sites at prices
2 that are lower than the price of their goods on Amazon Marketplace. *See id.* Plaintiffs allege
3 that Amazon’s policies inflated prices of goods offered for sale at online retailers other than
4 Amazon, damaging Plaintiffs. Plaintiffs also allege that Amazon had similar policies in Europe
5 but withdrew them “under pressure from British and German regulators.” *Id.* at ¶ 127.

6 The instant Motion deals with Amazon’s attempts to obtain in discovery: 1) information
7 as to named Plaintiffs’ medical prescriptions; and 2) Plaintiffs’ hard-copy receipts and other
8 indicia of purchases made at brick-and-mortar stores. The parties have reached an agreement as
9 to the first kind of information. What remains is a dispute over the brick-and-mortar receipts,
10 found in Requests for Production (“RFPs”) 3, 4, 5, 7, 9, 11, 12, 17, 27, 36, and 46.

11 This dispute has been simmering for almost a year. On August 15, 2022, the parties
12 engaged in a Rule 26(f) conference. Dkt. #69 at 2. Amazon asked Plaintiffs to preserve
13 documents related to “purchases of products during the putative Class Period . . . whether online
14 or in a physical store,” “shopping habits and practices,” and “document and data preservation
15 practices.” *Id.* at 7, 10. Plaintiffs met with Amazon’s counsel on December 15, 2022, January
16 18 and 30, 2023, February 23, 2023, and April 4, 2023, concerning their objections to this kind
17 of discovery. The parties exchanged numerous rounds of back-and-forth emails.

18 As a compromise, Plaintiffs offered to search their electronic records, including emails
19 and credit card statements that will reflect both online and brick-and-mortar purchases. Dkt.
20 #98-3 at 8. Plaintiffs also proposed to produce a reasonable set number of paper receipts, or
21 produce paper receipts from specific retailers. Amazon counteroffered that each named Plaintiff
22 preserve and produce new hard-copy receipts and other paper documents relating to brick-and-
23 mortar purchases for a year and spend eight hours searching their homes, offices, cars, or other
24 locations for existing paper receipts (or if less than eight hours, provide Amazon a written

1 explanation of where they searched and for how long). Dkt. #98-4 at 4, Dkt. #98-7 at 4.
2 Amazon later counteroffered that Plaintiffs preserve records for only 10 months. The parties
3 could not agree, and the instant Motion followed.

4 “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any
5 party’s claim or defense and proportional to the needs of the case, considering the importance of
6 the issues at stake in the action, the amount in controversy, the parties’ relative access to
7 relevant information, the parties’ resources, the importance of the discovery in resolving the
8 issues, and whether the burden or expense of the proposed discovery outweighs its likely
9 benefit.” Fed. R. Civ. P. 26(b)(1). “The court may, for good cause, issue an order to protect a
10 party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Fed.
11 R. Civ. P. 26(c)(1). “The decision to issue a protective order rests within the sound discretion
12 of the trial court.” *Seiter v. Yokohama Tire Corp.*, 2009 U.S. Dist. LEXIS 76844, 2009 WL
13 2461000, *1 (W.D. Wash. 2009).

14 Amazon asserts that brick-and-mortar receipts are relevant to assess the relevant market
15 for Plaintiffs’ antitrust claims.¹ Dkt. #101 at 9. While information as to the purported class’s
16 aggregate purchases is clearly relevant, and the individual Plaintiffs’ itemized physical store
17 purchases may be relevant, the burden on these Plaintiffs to hold onto every paper receipt does
18 not strike the Court as proportional to the needs of the case considering Amazon’s relative
19 access to market data, the parties’ comparative resources, and the relatively low importance of
20 this information compared to market-wide data. The Court is convinced that the medium
21 burden on Plaintiffs outweighs the small benefit to Amazon. To make this point, Plaintiffs
22 argue:

23 ¹ To prove their antitrust claims, Plaintiffs must prove a relevant market—a market that “must encompass the
24 products at issue as well as all economic substitutes for the product.” *Newcal Indus., Inc. v. Ikon Office Sol.*, 513
F.3d 1038, 1045 (9th Cir. 2008) (citation omitted).

1 Plaintiffs' individual purchases at brick-and-mortar stores provide
 2 "the least reliable evidence" to analyze the relevant market. *In re*
 3 *Cox Enters.*, 2014 WL 104964, at *10 (internal quotation marks
 4 and citation omitted). The "determination of the correct antitrust
 5 market must be conducted using market-wide data," such as data
 6 from third-party sources or transactional or market surveillance
 7 data maintained by Amazon. *In re Asacol Antitrust Litig.*, 2017
 8 WL 11476172, at *3. If Amazon ultimately challenges Plaintiffs'
 9 market definition, it seems incredible that Amazon would base its
 10 analyses on paper receipts from a few named Plaintiffs.

11 Dkt. #97 at 14 (citing *In re Cox Enters., Inc. Set-Top Cable Television Box Antitrust Litig.*, 2014
 12 WL 104964, (W.D. Okla. Jan. 9, 2014); *In re Asacol Antitrust Litig.*, 2017 WL 11476172 (D.
 13 Mass. Jan. 3, 2017)). The Court agrees.

14 Amazon also argues that it needs this data to determine Plaintiffs' suitability as class
 15 representatives, specifically whether their shopping habits are typical of the putative class. Dkt.
 16 #101 at 11–12 (citing *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 984 (9th Cir. 2011)).
 17 Plaintiffs reply that "[t]ypicality focuses on the class representative's claim" and "not the
 18 specific facts from which the claim arose[.]" Dkt. #104 at 4 (quoting *Just Film, Inc. v. Buono*,
 19 847 F.3d 1108, 1116 (9th Cir. 2017)). "In determining whether typicality is met, the focus
 20 should be on the defendants' conduct and plaintiff's legal theory[.]" *Lozano v. AT&T Wireless*
 21 *Servs.*, 504 F.3d 718, 734 (9th Cir. 2007) (quotation omitted). Plaintiffs cite *Nitsch v.*
 22 *Dreamworks Animation SKG Inc.*, 315 F.R.D. 270, 284 (N.D. Cal. 2016) for the proposition
 23 that "[T]o satisfy the typicality requirement," it is "sufficient" that "Plaintiffs have alleged the
 24 same antitrust violation as to every class member." The Court is convinced that itemized
 receipts will not help determine the typicality of Plaintiffs' claims against Amazon, and that this
 is a further basis to grant the Motion.

1 The usefulness of this type of information from the named Plaintiffs is weighed against
 2 the burden on those Plaintiffs when considering proportionality. The Court is convinced that

1 asking Plaintiffs to save paper receipts on every purchase, exchange, or return over the course of
2 a year is a significant burden. Plaintiffs' earlier compromise to "produce... credit card and bank
3 statements, PayPal, Venmo, debit card information, and receipts sent by email—as well as the
4 reasonable number of hard-copy documents," Dkt. #104 at 6, however is proportional to the
5 needs of this case. Accordingly, the Court will grant this Motion but require Plaintiffs to
6 commit to their earlier compromise.

7 Having reviewed the relevant briefing and the remainder of the record, the Court hereby
8 finds and ORDERS that Plaintiffs' Motion for a Protective Order, Dkt. #97, is GRANTED.
9 Amazon may not conduct discovery of any purchases Plaintiffs made through a prescription.
10 The Court further orders that Plaintiffs are relieved of any duty to preserve, search or provide
11 paper records concerning their brick-and-mortar purchases, but must proceed with their
12 compromise to "produce... credit card and bank statements, PayPal, Venmo, debit card
13 information, and receipts sent by email—as well as the reasonable number of hard-copy
14 documents." The parties are to make every reasonable effort to resolve any further
15 disagreements on this issue without Court involvement. The Court will issue a Minute Order
16 granting the nearly identical Motion in the related case, *De Coster et al. v. Amazon*, C21-
17 693RSM, consistent with the stipulation of the parties to share discovery and the Court's Order
18 at Dkt. #123.

19 DATED this 12th day of July, 2023.

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22 RICARDO S. MARTINEZ
23 UNITED STATES DISTRICT JUDGE
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